

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Administration of the
North American Numbering Plan
Carrier Identification Codes ("CICs")

§
§
§
§
§

CC Docket No. 92-237

RECEIVED
MAY 21 1997
FCC MAIL ROOM

MOTION IN SUPPORT OF
VARTEC TELECOM, INC.'S
EMERGENCY MOTION FOR STAY
AND
PETITION FOR RECONSIDERATION

Thrifty Call, Inc. ("TCI")¹ hereby supports VarTec Telecom, Inc.'s ("VarTec") Emergency Motion for Stay and Petition for Review filed on May 19, 1997 in regard to the Commission's Second Report and Order ("Report and Order") in CC Docket No. 92-237.²

First, TCI supports VarTec's Emergency Motion for Stay because its request meets the four requirements for the issuance of such a stay: 1) a strong likelihood exists that VarTec will prevail on the merits because the Commission's action was arbitrary and capricious and contrary to the stated reasoning underpinning the rulemaking³; 2) if a stay is not granted, the loss to VarTec, and all carriers that rely on the usage of CICs by their end users, will be great, irreparable and certain to occur as VarTec, and similarly situated carriers, will lose the goodwill they developed through CICs as well as their rights under the First Amendment; 3) adequate compensatory or other corrective relief will be unavailable at a later date because VarTec, and similarly situated IXC's, already will have

¹ TCI is a long distance company which operates in 16 states and offers the public discounted long distance service via the 10XXX calling method as one of its primary service offerings. Therefore, we rely heavily on the usage of our CIC by our customers as a substantial source of our revenues.

² Second Report and Order, 62 Fed. Reg. 19,056 (April 18, 1997).

³ Additionally, as argued in VarTec's pleadings, VarTec is likely to establish that the Commission's Report and Order constitutes an infringement of carriers' rights under the First and Fifth Amendments to the U.S. Constitution and violates the Regulatory Flexibility Act, 5 U.S.C. §603 et seq. ("RFA"), and Section 257 of the Communications Act, 47 U.S.C. §257.

lost their goodwill and customer base and no truly effective means exists to salvage such goodwill or customer base; and 4) the requested stay will not substantially harm any other party and will serve the public interest by maximizing the number of CICs available to consumers who might otherwise be confused and unable to use their “dial-around” carrier(s) of choice.

Second, TCI supports VarTec’s Petition for Reconsideration filed simultaneously with the Emergency Motion for Stay for the following reasons: 1) the Report and Order is arbitrary and capricious under the Administrative Procedures Act, 5 U.S.C. §§551-559 (“APA”) because its refusal to grandfather five-digit CICs and force an unconscionable transition period on all members of the IXC industry undermines rather than furthers the Commission’s ostensible goal of promoting new services and technologies to support continued economic growth⁴; 2) the Report and Order violates the Fifth Amendment of the United States Constitution by depriving VarTec, and similarly situated carriers, of their property interests in their five-digit CICs (which are their service marks) without just compensation; 3) the Report and Order also violates VarTec’s, and similarly situated carriers’, First Amendment rights to freedom of commercial speech by not creating alternative regulations that advance the government’s interest in this proceeding while avoiding an infringement of commercial speech rights; and 4) the Report and Order violates the Communications Act and the RFA by creating market entry barriers for small businesses.⁵

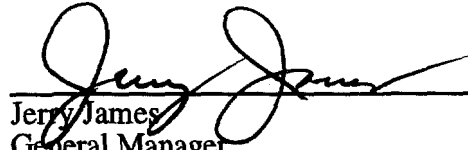
⁴ Also, implementation of the Report and Order will cause customer confusion and decreased revenues for dial-around IXCs, produce fewer CICs to assign to new services and carriers and result in less, not more, competition in the long distance arena.

⁵ In the Report and Order, the Commission required small IXCs to bear the overwhelming cost of consumer education rather than the large LECs, the main beneficiaries of the Commission’s action. Additionally, the Commission did not require the LECs to provide a competitively neutral intercept message. Both omissions violate the RFA. Also, the Report and Order violates Section 257 of the Communications Act by erecting, not eliminating, market entry barriers for small businesses by increasing IXCs’ costs of educating their customers and reducing their revenues through end users lost due to confusion.

In short, the Commission has attempted to create a policy that flies in the face of the intent of Congress by not protecting consumers or promoting competition, and endangers the viability of smaller carriers, thus undermining competition. For the reasons stated above, Thrifty Call, Inc. supports VarTec in its Emergency Motion for Stay and Petition for Reconsideration.

Respectfully submitted,
THRIFTY CALL, INC.

By:


Jerry James
General Manager
Thrifty Call, Inc.

Dated: May 23, 1997

CERTIFICATE OF SERVICE

I, Marilyn Donnelly, a secretary in the office of Thrifty Call, Inc., do hereby state and affirm that copies of the foregoing "Motion in Support of VarTec Telecom, Inc.'s Emergency Motion for Stay and Petition for Reconsideration" were served via first class mail this 23rd day of May, 1997, on the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N. W.
Room 814
Washington, D. C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N. W.
Room 802
Washington, D. C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N. W.
Room 844
Washington, D. C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M. Street, N. W.
Room 832
Washington, D. C. 20554

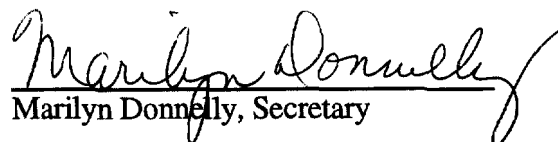
William E. Kennard, General Counsel
Office of the General Counsel
Federal Communications Commission
1919 M Street, N. W.
Room 614
Washington, D. C. 20554

Regina Keeney, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N. W.
Room 500
Washington, D. C. 20554

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N. W.
Room 222
Washington, D. C. 20554

Michael G. Hoffman
General Counsel
Senior Vice President
Legal and Regulatory Affairs
VarTec Telecom, Inc.
3200 W. Pleasant Run Road
Lancaster, TX 75146

James U. Troup
Roger P. Furey
Steven J. Hamrick
Arter & Hadden
1801 K Street, N. W.
Suite 400K
Washington, D. C. 20006-1301
Counsel for VarTec Telecom, Inc.


Marilyn Donnelly, Secretary